IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 333 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

USHABEN WD/O ARVINDBHARATHI VITHALBHARATHI GOSAI

Versus

MAHENDRA VITHALBHAI PATEL

Appearance:

HL PATEL ADVOCATES for Petitioners

MR BS PATEL for Respondent No. 1, 2, 3, 4, 5

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/02/2001

ORAL JUDGEMENT

1. The Appellants herein are the plaintiffs in Civil Suit No. 202/2000 pending before Second Joint Civil Judge (Senior Division) at Vadodara. They preferred the said suit seeking declaration and injunction in respect

of Block No. 12 admeasuring Ha. 0-56-66 of village Vemali. The declaration sought was to the effect that they are the exclusive owner and occupier of the said land and that document of sale executed on 19.11.1997 in favour of the defendant no. 1 to 4 are void and that they do not acquire any right thereunder. The injunction was to the effect that the defendants are to be restrained from disturbing possession of the plaintiffs qua the said land with a further injunction on defendants from transferring or creating any encumberances on the said piece of land.

2. The plaintiffs / appellants alongwith the suit preferred an application for temporary injunction pending the suit at Exh. 5. The learned Trial Judge after considering the rival side contentions dismissed the said application Exh. 5. However, in order to protect the interest of the plaintiffs the learned Trial Judge directed the defendants to furnish a solvent security for an amount of Rs.6,32,688/- and also to execute a personal bond within thirty days from the date of the order i.e. 10th August, 2000.

3. Feeling aggrieved by the said order the plaintiffs have approached this Court

4. The case of the Opponents as against the case of the plaintiffs is that the document of sale has been executed by a power of attorney holder, defendant no. 5 on 19.11.1997 and the suit is filed in the year 2000. Even if date of public notice is considered notice was issued on 21st April, 1999 and the suit is preferred on 7th March, 2000 i.e. after 10 months and therefore the suit is bad on account of delay and latches and no indulgence can be shown. It is further the case of the defendants that they are bonafide purchasers of the property in question for value and their investments made in 1997 cannot be sought to be strangulated by the suit.

5. Mr.Asim Pandya, learned Advocate appearing for Mr. H.L. Patel, advocate submitted that the Court below has committed an error in not considering the fact that power of attorney was not valid. He submitted further that even if power of attorney is accepted at face value, the property in question could not have been sold without being converted to non-agricultural use. He submitted further that the Court below has remained contented by directing defendant to furnish security for Rs. 6,32,688/- which cannot be a substitute for the plaintiffs' right. He therefore urged that this appeal may be entertained.

6. Ms. B.S. Patel, learned advocate appearing on behalf of the respondent on caveat has opposed this appeal. He submitted that the purchasers are also agriculturists. He further submitted that the suit is bad on account of delay and latches. According to him the Trial Court has protected interest of the plaintiff and has passed an equitable order and it may not be interfered with by this Court.

7. Having regard to rival side contentions certain events in their sequence need to be noted. A power of attorney was executed by the father of the plaintiff in favour of defendant no. 5 on 12th May, 1993. On the basis of this power of attorney the sale deeds were executed by the power of attorney holder on 19th November, 1997. The donor of the power of attorney was then alive who expired on 15.07.1999. A public notice came to be issued in a newspaper on 21st April, 1999 to which a public reply was also published on 21st April, 1999 and thereafter the present suit was filed in the month of March, 2000.

8. In that sequence what is relevant to note is that sale deed in question was executed during the life time of the donor of the power of attorney and no objection was raised to the said transactions. Even thereafter, for about three years no objection is raised by the plaintiffs. Assuming that the plaintiff had no knowledge about the transactions in the month of April, 1999, still challenge is made for the first time in March, 2000. It also requires to be noted that although validity of the power of attorney was assailed by the learned advocate during the course of argument made by learned Advocate Mr.Asim Pandya, there appears no challenge to the validity of power of attorney in the suit nor it is the case of the plaintiffs that they have challenged the validity of the power of attorney separately. In view of the above sequential developments and in view of the facts considered by the Trial Court, this Court is not inclined to entertain this appeal. There are several questions like limitation, delay and latches which need to be considered. There is no cogent material to lend support to the plaintiffs case. It also transpires from power of attorney that a transaction was entered into between the donor of the power of attorney and one Mr. Sandeep Modi for the property in question. The Trial Court has observed that the defendants could produce xerox copies of the index for the sale deed from the record of Regular Civil Suit No. 919/99 wherein names of the defendants are indicated as party having agreement in

their favour which supports the case of the defendants.

9. For the foregoing reasons there appears no substance in the appeal and the same is dismissed. No costs.

(A.L. DAVE,J.)

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